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GHG Hearing

EPA's Greenhouse Gas Rules Are Illegal, Opponents Tell Appeals Court Panel

Bloomberg, 3/1/12

The U.S. Environmental Protection Agency's limits on industrial emissions of greenhouse gases including carbon dioxide are illegal and must be thrown out, opponents told federal judges inWashington. A three-judge panel of the U.S. Court of Appeals today considered challenges to the agency's rules determining which polluters are covered and when states and industries must comply with regulations curtailing the use of greenhouse gases. The three-judge panel of the U.S. Court of Appeals heard arguments against a 2010 rule on motor vehicle emissions that opponents said improperly sets greenhouse-gas standards for stationary sources, such as steel mills and power plants. A lawyer for the National Association of Manufacturers told the judges the EPA violated the law when the agency raised emissions thresholds far above what Congress called for.

More at: http://bloom.bg/y2XLU5

Federal appeals court hears challenges over EPA finding

Legal Newsline, 3/1/12

A federal appeals court heard challenges this week from more than a dozen states and a government watchdog group over the U.S. Environmental Protection Agency's greenhouse gas "endangerment" finding. The U.S. Court of Appeals for the District of Columbia was scheduled to listen to arguments Tuesday and Wednesday mornings. Among those suing the EPA is the Pacific Legal Foundation. The PLF describes itself as a leading watchdog organization that litigates for "limited government, property rights and a balanced approach to environmental regulations, in courts across the country." More at: http://bit.ly/x9rDzW

D.C. Circuit Judges Press Industry Groups to Explain Harm From EPA Tailoring Rule

Daily Environment Report, 3/1/12

Federal appellate judges pressed state and industry groups Feb. 29 to explain how they are harmed by an Environmental Protection Agency rule meant to limit the applicability of greenhouse gas permitting to the largest facilities (*Coalition for Responsible Regulation v. EPA,* D.C. Cir., 10-1092, 2/29/12 ; *American Chemistry Council v. EPA,* D.C. Cir., 10-1167, 2/29/12). Judges for the U.S. Court of Appeals for the District of Columbia Circuit questioned whether those states and industry groups have the standing to challenge EPA's tailoring rule for greenhouse gas permits. Additionally, the judges repeatedly asked EPA to defend its interpretation of the Clean Air Act and questioned whether there were other plausible interpretations in which the tailoring rule would not be necessary.

More at: http://bit.ly/zWIl03

Challengers of Greenhouse Gas Rules Target Link Between Vehicles, Stationary Sources

Daily Environment Report, 2/29/12

The Environmental Protection Agency failed to consider the policy consequences of its determination that greenhouse gas emissions from vehicles should be regulated under the Clean Air Act and whether its regulations would effectively address climate change, industry groups argued in federal court Feb. 28 (*Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 09-1322, 2/28/12; *Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 10-1073, 2/28/12). EPA's endangerment finding issued in 2009 for greenhouse gas emissions from motor vehicles is "incomplete in its attention to the policy consequences of its subsequent regulations," Patrick R. Day, a partner at

Holland & Hart LLP representing the Coalition for Responsible Regulation and other industry groups, said during oral arguments before the U.S. Court of Appeals for the District of Columbia Circuit.
More at: http://bit.ly/yWN4R5

Judges' questions put heat on EPA, rule challengers

Greenwire, 2/29/12
Both U.S. EPA and its adversaries faced tough questioning this morning on the second day of arguments over the lawfulness of the agency's greenhouse gas regulations. On the one hand, the three judges of the U.S. Court of Appeals for the District of Columbia Circuit appeared to have strong concerns about whether industry challengers had standing to challenge one of the rules. But they also indicated that it might be possible for a separate challenge to existing regulations that regulate major polluters to proceed. More at: http://bit.ly/xdWICp

Renewable Energy

Carrollton Powers Up With Stimulus Money

NBC DFW, 2/27/12
The city of Carrollton is using a big chunk of federal stimulus money to become more energy efficient. The city is installing two solar power systems. City leaders said the $512,000 price tag is worth it. "It's new technology, and we are at the cutting edge of it," said Michael McKay, Carrollton's civil engineering manager. McKay said solar power systems are being installed on top of City Hall, and Fire Station No. 2 in Carrollton. More at: http://bit.ly/zZnTRF

Bingaman preps electricity standard bill for rollout tomorrow

Greenwire, 2/29/12
Sen. Jeff Bingaman (D-N.M.) tomorrow will roll out his plan for a "clean" electricity mandate, although he isn't optimistic that Congress will pass the bill. The legislation would require utilities to generate a certain percentage of their electricity from low-carbon sources, like renewable energy, nuclear power and coal, the chairman of the Senate Energy and Natural Resources Committee said in a brief outline of the proposal this morning during a speech at an Energy Department conference in Maryland. Under Bingaman's proposal, all methods of generating electricity that release less carbon dioxide than state-of-the-art supercritical coal plants would get credit on a sliding scale, depending on their emissions. More at: http://bit.ly/ziatve

Radon in Schools

Radon in U.S. classrooms a concern

UPI, 3/1/12
Radioactive radon gas, a known carcinogenic, is in thousands of U.S. classrooms but many districts are doing nothing about it, NBC's "Today" show reported. Radon, released in the breakdown of soil and rock, can seep into buildings and the air we breathe and with chronic exposure can be deadly, experts said. At one school in Pennsylvania, tests showed nearly double the EPA's accepted limit for radon gas, "Today" reported Wednesday. More at: http://bit.ly/wSeh7R

OK Regional Haze

Emissions plan review sought

The Oklahoman, 3/1/12
Oklahoma and its two largest electrical utility companies are continuing to push back against a U.S. Environmental Protection Agency plan to reduce emissions that impact visibility at federal wildlife areas. The state, Oklahoma Gas and Electric Co. and Tulsa-based Public Service Co. of Oklahoma filed petitions last week asking the 10th Circuit Court of Appeals in Denver to review the EPA's decision to reject the state's plan to reduce emissions in favor of its own.

“The EPA's decision to implement new guidelines under the regional haze rule, which is not health related, goes against Oklahoma's right to enact a state solution that not only would exceed federal standards, but would spare Oklahoma utility consumers from substantial utility rate increases at a time when families are struggling,” said Diane Clay, spokeswoman for Oklahoma Attorney General Scott Pruitt. More at: http://bit.ly/y5sAOi

AG, utilities file to stop emissions rule

Muskogee Phoenix, 3/1/12

Clean-air advocates criticized efforts by two public utilities and the Oklahoma Attorney General’s Office to undo federal rules designed to reduce emissions from coal-fired power plants. Those entities filed petitions challenging the U.S. Environmental Protection Agency’s regional haze rule, which took effect Jan. 27. Federal regulators adopted the rule after deciding a state proposal failed to address the best ways to reduce sulfur-dioxide emissions at three Oklahoma power plants. Attorney General Scott Pruitt filed a petition on behalf of the state and Oklahoma Industrial Energy Consumers, an unincorporated association of businesses trying to keep energy costs reasonably low. Oklahoma Gas & Electric Co., which operates two of the power plants targeted by the rule, and Public Service Co. of Oklahoma, the owner of the third targeted facility, also asked the 10th Circuit Court of Appeals to review the federal rule. More at: http://bit.ly/w4Q52D

Invasive Species

Tiger shrimp hunted in Gulf

San Antonio Express-News, 3/1/12

When the shrimp boat Captain Wallace pulled into port last week, it carried something sinister in its catch: a nearly 11-inch black tiger shrimp. Characterized by their super size and tiger-like striping, the nonnative monster to the Gulf of Mexico was the 10th this year to meet the measuring stick of coastal biologist Tony Reisinger. Those who study the Gulf's ecology fear one or more breeding populations have been established, and that the tigers may spread unchecked, toppling the food chain and wiping out native shrimp and other Gulf species. More at: http://bit.ly/yreNQP

Golf Resort Violations

Flying L cited by TCEQ over water hazards

San Antonio Express-News, 3/1/12

A golf resort in Bandera County has been cited by the Texas Commission on Environmental Quality over ponds it allegedly created for use both as water hazards and irrigation reservoirs. The probe of the Flying L Guest Ranch arose from a complaint to the state agency by the Bandera County River Authority and Groundwater District. Records show that an inspection in December at the resort just outside Bandera identified alleged violations concerning the impoundments built on unnamed creeks there. A TCEQ notice of violations issued Feb. 17 says resort officials failed to obtain the required state clearances to create the impoundments and to discharge groundwater into a state water course. Flying L officials couldn't be reached for comment. [no further text]

Oil Spill Settlements

Gulf oil spill case court docket is busy as settlement talks continue

New Orleans Times-Picayune, 3/1/12

As **settlement negotiations** in the **Gulf oil spill** lawsuit continue between **BP** and the Plaintiffs' Steering Committee, representing private parties who have sued the company for damages, Judge Carl Barbier and magistrates overseeing the **larger lawsuit** that includes the federal and Gulf Coast state governments continue to churn out rulings that could affect the ultimate outcome. On Wednesday, Barbier asked Magistrate Judge Joseph C. Wilkinson, Jr. to oversee a feud between the Wisner Donation Trust and BP over whether the oil company had turned over records of damage it did to the segment of Fourchon Beach owned by the trust. The trust contends that an agreement it signed with BP

allowing the company to clean oil from its land included a requirement that BP provide it with detailed records of the damage caused by the oil and the cleanup operations, and the company has refused to turn them over.
More at: http://bit.ly/y2DvWF

Pearl River Fish Kill

Pearl River's health assessed after massive chemical discharge killed thousands of fish

New Orleans Times-Picayune, 3/1/12

For a time last summer, the waters of the West Pearl River turned from chocolate brown to dense black, the river's surface jammed with **hundreds of thousands of dead fish**. Six months after **an illegal chemical discharge from the Temple-Inland paper mill in Bogalusa**, the river looks like the river again. Fish have returned to the West Pearl and adjacent waterways, with an assist from state fisheries experts. And local officials and environmentalists are closely monitoring the river's condition. Mike Wood, fisheries director for the state Department of Wildlife and Fisheries, said the department is in the midst of a three-year intensive sampling project concerned with restoring the river.
More at: http://bit.ly/z8DOtS

DoI Budget

Landrieu Issues Warning on Interior Budget To Get More Funding for Gulf Coast States

Daily Environment Report, 3/1/12

Sen. Mary Landrieu (D-La.) made a plea for directing more government revenue from offshore oil and gas drilling to Gulf Coast states to restore coastal areas and wetlands that are affected by oil and natural gas operations off their shores during a Feb. 29 budget hearing. Landrieu threatened to take virtually any action necessary to make that happen, although she did not say specifically whether she intends to hold up the bill unless her demands are met.
Landrieu's sometimes emotional comments were directed at Interior Secretary Ken Salazar during the first hearing of the Senate Subcommittee on Interior, Environment, and Related Agencies on the president's fiscal year 2013 budget.
Landrieu's ire was triggered by the Interior Department's proposal to cancel $200 million in unspent funds that were intended for the coastal impact assistance program, which was established with Landrieu's help to assist coastal states with the effects of energy production off their shores. More at: http://bit.ly/zpyJ8W

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EPA's Greenhouse Gas Rules Are Illegal, Opponents Tell Court

By Tom Schoenberg - Feb 29, 2012

The U.S. Environmental Protection Agency's limits on industrial emissions of greenhouse gases including carbon dioxide are illegal and must be thrown out, opponents told federal judges in Washington.

A three-judge panel of the U.S. Court of Appeals today considered challenges to the agency's rules determining which polluters are covered and when states and industries must comply with regulations curtailing the use of greenhouse gases.

"The agency crossed the line from statutory interpretation to statutory revision," Peter Keisler, a lawyer for the National Association of Manufacturers, told the judges. He said the EPA violated the law when the agency raised emissions thresholds far above what Congress called for.

Companies such as Massey Energy Co. (MEE), business groups including the U.S. Chamber of Commerce and states led by Texas and Virginia are seeking to stop the agency through more than 60 lawsuits. Some argue that the agency relied on biased data from outside scientists, including some affiliated with the so-called climategate scandal.

The arguments were split into three parts. The panel heard arguments yesterday on the agency's finding that greenhouse gases are pollutants that endanger human health. They also heard arguments against a 2010 rule on motor vehicle emissions that opponents said improperly sets greenhouse-gas standards for stationary sources, such as steel mills and power plants.

'Tailoring Rule'

Today, the court considered challenges to the EPA's "tailoring rule," which limits the businesses covered by carbon regulation and phases in controls.

The agency aims to phase in industrial polluters covered by the carbon rules through 2016. The EPA argued in court filings that the tailoring rule is acceptable under the Clean Air Act and necessary to avoid states being overrun with permit requests.

In 2007, the Supreme Court ruled that the EPA had authority to regulate greenhouse gases such as carbon dioxide and methane under theClean Air Act if the agency declared them a

public danger. The EPA issued a so-called endangerment finding in December 2009, clearing the way for regulation of emissions from power plants, factories and other sources linked to global climate change.

The regulations require only the biggest emitters, such as power plants and oil refiners, obtain state carbon permits before building or upgrading facilities. State officials will determine pollution controls case by case.

'Uphill Battle'

"A lot of the focus has been on endangerment, but that is going to be an uphill battle" for industry, said Jeffrey Holmstead, a lawyer atBracewell & Giuliani LLP (1222L) in Washington who isn't involved in the case. "The biggest vulnerability for EPA is on the tailoring rule."

If the EPA loses on that it would create such chaos that "it forces Congress to act," said Holmstead, who was an EPA official during the George W. Bush administration.

The case is Coalition for Responsible Regulation Inc. v. Environmental Protection Agency, 09-1322, U.S. Court of Appeals, District of Columbia(Washington).

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Federal appeals court hears challenges over EPA finding

BY JESSICA M. KARMASEK

WASHINGTON (Legal Newsline) - A federal appeals court heard challenges this week from more than a dozen states and a government watchdog group over the U.S. Environmental Protection Agency's greenhouse gas "endangerment" finding.

Cuccinelli

The U.S. Court of Appeals for the District of Columbia was scheduled to listen to arguments Tuesday and Wednesday mornings.

Among those suing the EPA is the Pacific Legal Foundation.

The PLF describes itself as a leading watchdog organization that litigates for "limited government, property rights and a balanced approach to environmental regulations, in courts across the country."

The foundation argues that the EPA's finding is invalid because it did not submit its work product for independent scrutiny by its Scientific Advisory Board, as required by the Clean Air Act.

The agency's finding, released in December 2009, stated that greenhouse gas emissions from vehicles pose a danger to public health and welfare.

"The EPA violated the law and the demands of responsible, accountable government, by imposing a sweeping judgment about CO2 emissions without independent review by scientists of the highest caliber," Ted Hadzi-Antich, senior staff attorney for PLF, said in a statement.

The SAB is a panel of top scientists from universities, research institutions and other highly regarded organizations, empowered by federal law to review any new "criteria document, standard, limitation or regulation" that the EPA proposes to issue under the Clean Air Act.

"Since the 1970s, the EPA has been required by law to submit new regulations for review by the Science Advisory Board," Hadzi-Antich explained. "For some reason, however, under the current administration, the EPA is violating the law and trying to impose sweeping new greenhouse regulations without the required independent scientific scrutiny of the SAB."

Hadzi-Antich argues that the agency can't be permitted to "thumb their noses" at the law and the American people.

"PLF is not a scientific organization, and we don't take a position on the scientific issues per se. Rather, as a watchdog organization, we are fighting for honesty and integrity in the regulatory process, against a bureaucracy that seems to think it is above the law," he said.

"Our attempt to keep the EPA honest and accountable is especially important at this time, when the economy is still struggling."

The ruling, the group argues, could lead to "command and control" regulations, leaving the economy "wheezing."

Also suing the EPA over its finding is Virginia Attorney General Ken Cuccinelli.

Like the PLF, Cuccinelli argues that the EPA violated the law by relying almost exclusively on data from the United Nations Intergovernmental Panel on Climate Change, rather than doing its own research or testing the IPCC data according to federal standards.

Cuccinelli, citing the infamous "Climategate" emails released in December 2009, contends the IPCC data may have been manipulated.

Cuccinelli had petitioned the agency in February 2010 to convene a new proceeding to reconsider its finding.

When the EPA refused to reevaluate its finding, Virginia, along with Texas and Alabama, sued. Later, 12 states joined in the appeal -- including Florida, Hawaii, Indiana, Kentucky, Louisiana, Mississippi, Nebraska, North Dakota,

Oklahoma, South Carolina, South Dakota and Utah.

The states all argue that the agency's finding will hurt their economies.

"The EPA's version of cap-and-trade will regulate emissions of carbon dioxide, from factories, to office buildings, to cars, to power plants," Cuccinelli said in a statement. "It is projected to cost households thousands of dollars a year because of increased energy taxes, and everything we buy that takes energy to manufacture or transport will increase in price.

"The regulations resulting from this new EPA authority will most certainly chase jobs out of the country, as the compliance costs to industry may be prohibitive, making our loss China's gain. And what is worse is that the people who will suffer the most as a result of these regulations are the poor."

The Virginia attorney general contends the EPA is exercising a political agenda, instead of a "protecting-the-plant" agenda.

"From the beginning, all we have asked EPA to do is to reopen its hearings to accept the conflicting data, as well as follow the law and verify the data it already used, so we all can have an honest look at the information used to make such an economy-altering decision for this country," Cuccinelli said.

"We are in court because to-date, the EPA has refused to do even that."

From Legal Newsline: Reach Jessica Karmasek by email at jessica@legalnewsline.com.

Filed Under: **Hot Topics**

Climate Change

D.C. Circuit Judges Press Industry Groups To Explain Harm From EPA Tailoring Rule

BNA Snapshot

Oral Arguments Over EPA Greenhouse Gas Regulations

Key Development: D.C. Circuit judges pressed states and industry groups to demonstrate how they are harmed by EPA's tailoring rule.

Potential Impact: The states and industries cannot challenge the tailoring rule unless they can demonstrate they have standing.

By Andrew Childers

Federal appellate judges pressed states and industry groups Feb. 29 to explain how they are harmed by an Environmental Protection Agency rule meant to limit the applicability of greenhouse gas permitting to the largest facilities (*Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 10-1092, *oral argument* 2/29/12; *American Chemistry Council v. EPA,* D.C. Cir., No. 10-1167, *oral argument* 2/29/12).

Judges for the U.S. Court of Appeals for the District of Columbia Circuit questioned whether those states and industry groups have the standing to challenge EPA's tailoring rule for greenhouse gas permits.

Additionally, the judges repeatedly asked EPA to defend its interpretation of the Clean Air Act and questioned whether there were other plausible interpretations offered by petitioners in which the tailoring rule would not be necessary.

The court heard oral argument Feb. 29 in lawsuits challenging EPA's tailoring rule. The court also heard arguments that applying greenhouse gas regulation to prevention of significant deterioration permitting opens a window to challenge the agency's long-standing interpretation of the permitting requirements.

The judges heard oral argument in challenges to EPA's greenhouse gas endangerment finding and vehicle emissions rules Feb. 28 (*Coalition for Responsible Regulation v. EPA*, D.C. Cir., No. 09-1322, 2/28/12; *Coalition for Responsible Regulation v. EPA*, D.C. Cir., No. 10-1073, 2/28/12; 39 DEN A-1, 2/29/12).

Judges Question Standing

The challengers are asking the D.C. Circuit to vacate EPA's tailoring rule because it deviates from the explicit emissions permitting thresholds in the Clean Air Act. However, Chief Judge David Sentelle said affected industries and state regulators would be “worse off rather than better off” if the rule was struck down.

“I thought the tailoring rule and timing rule actually reduced burdens,” he said. “What is the harm?”

The challengers must demonstrate that they have been harmed by the tailoring rule to show that they have standing to challenge its requirements.

Texas Solicitor General Jonathan Mitchell said EPA's greenhouse gas permitting requirements impose new burdens on industries and state regulators. Overturning the tailoring rule, which limits the applicability of the permitting requirements to only the largest stationary sources, would create an unworkable situation that would force EPA to abandon or reconsider its entire permitting regime for stationary sources.

“Somewhere along the line they'll have to back away,” Mitchell said.

The tailoring rule limits prevention of significant deterioration and Title V greenhouse gas permitting to new sources that emit more than 100,000 tons per year of carbon dioxide-equivalent and modified sources that increase their emissions by more than 75,000 tons per year (75 Fed. Reg. 31,514; 92 DEN A-7, 5/14/10).

Clean Air Act Section 169(1) requires stationary sources with emissions greater than 250 tons per year to obtain prevention of significant deterioration permits. Sources with emissions greater than 100 tons per year are required to obtain Title V operating permits.

Without the tailoring rule, EPA contends that state regulators would be overwhelmed by the need to issue more than 6 million greenhouse gas permits, many of them for smaller sources that have not previously been subject to permitting requirements.

EPA Usurping Congressional Power

Industry groups and some states challenged the tailoring rule because it deviates from the 100-ton-per-year and 250-ton-per-year permitting thresholds. They argue EPA is effectively rewriting the statute, usurping a power reserved for Congress. Additionally, challengers said Congress never intended the act to apply to greenhouse gases because the permitting thresholds are so low they make application of the statute impossible.

"They have arrogated to themselves an extraordinary power" to redefine the statutory requirements of the Clean Air Act "in an ongoing way," Peter Keisler, a partner at Sidley Austin LLP representing several industry groups, said.

However, Sentelle said Congress has not taken any action to limit EPA's ability to regulate greenhouse gases in the nearly five years since the Supreme Court decided *Massachusetts v. EPA*, which ruled greenhouse gases are pollutants under the Clean Air Act (*Massachusetts v. EPA*, 549 U.S. 497, 63 ERC 2057 (2007)).

EPA defended the tailoring rule as a necessary step as it implements its greenhouse gas permitting program. It asked the judges to evaluate the tailoring rule using three court doctrines known as "absurd results," "administrative necessity," and "one step at a time" that would allow the agency to deviate from the text of the Clean Air Act if implementing it as written would be impossible.

"No one in this case has said we need to do it faster," Perry Rosen, a Justice Department attorney representing EPA, said.

'Subject to Regulation' Disputed

However, the American Chemistry Council and other industry groups argued EPA would not have needed the tailoring rule if it adopted a different interpretation of the prevention of significant deterioration requirements of the Clean Air Act.

At issue is the agency's interpretation of Section 165(a)(4), which says that best available control technology determinations for prevention of significant deterioration permits are required for "each pollutant subject to regulation under this chapter." EPA has historically interpreted that section to mean prevention of significant deterioration permitting applies to all pollutants, not just those subject to national ambient air quality standards. EPA has not issued air quality standards for greenhouse gases.

However, the industry groups argue the statute ties the permitting requirements to the air quality standards.

Keisler said EPA could interpret the statute to require only those industrial facilities already subject to prevention of significant deterioration permitting for traditional permits to control their greenhouse gas emissions. That would allow EPA to implement its greenhouse gas program for prevention of significant deterioration without resorting to the tailoring rule based on "theories of last resort" such as administrative necessity and absurd results, Keisler said. It would also significantly reduce the number of permits issued while capturing nearly the same amount of stationary source emissions as EPA's tailoring rule, he said.

If the court were to accept the industry group's argument, EPA's greenhouse gas standards for vehicles would no longer automatically trigger similar regulations for stationary emissions sources because greenhouse gases would not qualify as "subject to regulation" under Section 165, Sentelle said.

‘Extremely Significant Consequences.'

That interpretation would have “extremely significant consequences” for EPA's argument that it had no choice but to deviate from the text of the Clean Air Act and issue the tailoring rule, Judge David Tatel said.

Rosen said the industry group's interpretation “subverts statutory intent.”

Sean Donahue, an attorney representing the Environmental Defense Fund and other environmental groups, said the industries' interpretation would not alleviate the need to issue permits to 6 million sources under Title V of the Clean Air Act.

Additionally, that interpretation would preclude EPA from regulating not only greenhouse gases under the prevention of significant deterioration program, but all pollutants for which there are no air quality standards, Donahue said. EPA has regulated other pollutants such as hydrogen sulfide, fluorides, and hydrochlorofluorocarbons under the prevention of significant deterioration program, states and environmental groups intervening on behalf of EPA said.

Issues Decided in Alabama Power

EPA's attorneys said the industry groups lack the ability to challenge the prevention of significant deterioration program because the court in *Alabama Power v. Costle* determined that the permitting program applies to any regulated pollutant, not just those that are subject to air quality standards (*Alabama Power v. Costle*, 636 F 2d, 323, 353-54, 13 ERC 1993 (D.C. Cir. 1980)).

Amanda Berman, a Justice Department attorney representing EPA, said the industries have not raised “new grounds” to reopen EPA's application of prevention of significant deterioration to new court challenges.

The industry groups argued this is the first opportunity for some of their members to challenge EPA's prevention of significant deterioration program because they were not subject to its requirements prior to the agency's decision to regulate greenhouse gases.

“Nobody was hurt by this interpretation of the statute until now,” Keisler said.

Climate Change

Challengers of Greenhouse Gas Rules Target Link Between Vehicles, Stationary Sources

BNA Snapshot

Oral Arguments Over EPA Greenhouse Gas Regulations

Key Development: EPA's greenhouse gas endangerment finding and vehicle rule failed to consider the impact on stationary sources, challengers say during oral argument at D.C. Circuit.

Potential Impact: Challengers ask the court to vacate or remand EPA's rules for correction.

What's Next: Oral argument on the tailoring rule and prevention of significant deterioration resumes Feb. 29.

By Andrew Childers

The Environmental Protection Agency failed to consider the policy consequences of its determination that greenhouse gas emissions from vehicles should be regulated under the Clean Air Act and whether its regulations would effectively address climate change, industry groups argued in federal court Feb. 28 (*Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 09-1322, 2/28/12; *Coalition for Responsible Regulation v. EPA,* D.C. Cir., No. 10-1073, 2/28/12).

EPA's endangerment finding issued in 2009 for greenhouse gas emissions from motor vehicles is "incomplete in its attention to the policy consequences of its subsequent regulations," Patrick R. Day, a partner at Holland & Hart LLP representing the Coalition for Responsible Regulation and other industry groups, said during oral arguments before the U.S. Court of Appeals for the District of Columbia Circuit.

The D.C. Circuit is hearing oral arguments in a series of lawsuits challenging EPA's endangerment finding, its subsequent greenhouse gas rule for light-duty vehicles, and its tailoring rule to limit greenhouse gas permitting to only the largest stationary sources of emissions. The first day of arguments considered challenges to EPA's endangerment finding as well as the rule setting limits on vehicle emissions.

Petitioners Challenge Scientific Data

The petitioners challenged the scientific data upon which EPA relied when it issued its endangerment finding, its choice to regulate six greenhouse gases, and its determination that regulating vehicle emissions automatically triggered a requirement to issue similar rules for stationary sources. The industry groups and some states have asked the D.C. Circuit to overturn EPA's regulations.

In its endangerment finding in December 2009, EPA determined that greenhouse gas emissions from vehicles pose a threat to public health and the environment and should be regulated (74 Fed. Reg. 66,496; 233 DEN A-1, 12/8/09).

EPA later worked with the National Highway Traffic Safety Administration to issue joint greenhouse gas emissions limits and fuel economy standards that would require cars and light trucks to achieve 35.5 miles per gallon by model year 2016 (75 Fed. Reg. 25,324; 62 DEN A-7, 4/2/10).

Bound by Supreme Court Decision

However, the appeals court judges repeatedly pressed the petitioners to explain what authority EPA has under Section 202 of the Clean Air Act to consider any factors other than public health and welfare when making an endangerment finding, particularly in light of the U.S. Supreme Court's ruling in *Massachusetts v. EPA*.

The judges said that decision instructed EPA to focus exclusively on the health and environmental consequences of greenhouse gas emissions rather than consider costs or other factors.

"We're bound by that decision," Judge David Tatel said.

The Supreme Court ruled in 2007 that EPA had the authority under the Clean Air Act to regulate greenhouse gases as a pollutant (*Massachusetts v. EPA*, 549 U.S. 497, 63 ERC 2057 (2007)).

The states and industry groups challenging EPA's endangerment finding argued the Supreme Court's decision did not preclude the agency from considering the impact of its decision to regulate greenhouse

gases from vehicles because it would trigger similar rules for stationary sources. However, Chief Judge David Sentelle remained skeptical.
“Sometimes in reading petitioners' briefs, I got the impression *Massachusetts* hadn't been decided or wasn't binding,” he said.

Harm Never Quantified

The judges pressed EPA to explain its decision not to quantify the concentration of greenhouse gases in the atmosphere that would be considered harmful. The petitioners argued that EPA's regulations are arbitrary because the agency has not specified what level of greenhouse gases would be acceptable and to what degree its rules would help mitigate climate change.
“I just don't see how without some quantification a reviewing court has some basis for making an arbitrary and capricious decision,” Tatel said.
Jon Lipshultz, a Justice Department attorney defending EPA, said the Clean Air Act gives EPA discretion in determining when air pollutants pose a danger to public health or the environment. Previously, the act allowed EPA to regulate pollutants only when it was determined emissions “will” cause the public harm. However, the act was revised to allow the agency to regulate pollutants that “may reasonably be anticipated to endanger public health or welfare,” Lipshultz said.
Petitioners' demands that EPA quantify a level of harm for climate change are “simply not what Congress directed EPA to do,” he said.

Climate Data ‘Highly Uncertain.'

EPA relied on “highly uncertain” climate data, historical climate records, and modeling when it made its endangerment finding, argued Harry MacDougald, an attorney with Caldwell & Watson LLP representing the Southeastern Legal Foundation.
MacDougald and E. Duncan Getchell, Virginia's solicitor general, said some uncertainties such as the impact of solar radiation on climate and allegations of impropriety by researchers at the Climate Research Unit of the United Kingdom's University of East Anglia undermine EPA's assertion that it has a confidence level of between 90 percent and 99 percent that man-made emissions contribute to climate change (105 DEN A-1, 6/1/11).
Angeline Purdy, a Justice Department attorney representing EPA, said the challengers are exaggerating “marginal uncertainties” found in documents that have been subject to a thorough peer-review process.
Tatel said the court does not resolve disputes of science and that the petitioners need to prove EPA's endangerment finding was “arbitrary and capricious” for the court to overturn the agency's decision.
He challenged the petitioners' assertion that the studies used by EPA contained too many uncertainties to justify the endangerment finding.
“Your logical proposition fails at its premise because EPA did not find them uncertain,” he said.

Vehicle Rule Should Address ‘Absurd Results.'

The petitioners also argued that EPA should have considered the “absurd results” its vehicle rule produced by triggering greenhouse gas regulations for stationary sources as well.
“Before you make an endangerment finding, you need to stop and consider the result under it,” said Jeffrey Clark, a partner with Kirkland & Ellis LLP, representing the U.S. Chamber of Commerce.
Clean Air Act Section 169(1) requires stationary sources with emissions greater than 250 tons per year to obtain prevention of significant deterioration permits. Sources with emissions greater than 100 tons per year are required to obtain Title V operating permits. That would require 6 million sources to obtain permits, according to EPA.
To address that reality, EPA issued the tailoring rule, which requires that only new sources that emit more than 100,000 tons per year of carbon dioxide-equivalent and modified sources that increase their emissions by more than 75,000 tons per year must obtain such permits (75 Fed. Reg. 31,514).
Challengers argued that EPA should have considered that “absurd result” prior to issuing the vehicle rule and instead should have deferred regulating vehicle emissions or crafted a more narrow light-duty vehicle rule that would not have triggered stationary source regulations.

Eric Hostetler, another Justice Department attorney, said the agency chose to apply absurd results, a court doctrine allowing the agency to deviate from the clear text of the Clean Air Act, as narrowly as possible. The technology exists to implement the vehicle emissions standards. Rather than delay those standards, EPA chose to narrow its application of greenhouse gas permitting for stationary sources. "The stationary standards stand on their own," Hostetler said.

Endangerment Finding Looks Beyond Vehicles

In issuing its endangerment finding for emissions from vehicles, EPA identified six pollutants for regulation—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. However, vehicles do not emit perfluorocarbons or sulfur hexafluoride.

Clark, representing the Chamber of Commerce, said including those two pollutants showed EPA was "building the groundwork to regulate pollutants that don't come out of vehicles."

Sentelle said including those two pollutants in an endangerment finding focused on vehicle emissions "frankly disturbs me." However, he questioned whether industry groups had standing to challenge the inclusion because they would still be subject to EPA's greenhouse gas regulations even if those two pollutants were removed.

Purdy said EPA's approach to greenhouse gases has been comparable to its regulations for particulate matter or volatile organic compounds. For example, volatile organic compounds include thousands of different chemicals.

Approaching them as a group is more effective than regulating them individually, Purdy said, noting that EPA took the same approach with greenhouse gases.

"That's how the science looks at these," Purdy said. "It doesn't break out carbon dioxide from methane from PFCs. They all mix in the atmosphere."

Oral arguments will resume Feb. 29 as the court hears challenges to the tailoring rule and application of prevention of significant deterioration permitting to greenhouse gases.

CLIMATE:

Judges' questions put heat on EPA, rule challengers

Lawrence Hurley, E&E reporter
Published: Wednesday, February 29, 2012

Both U.S. EPA and its adversaries faced tough questioning this morning on the second day of arguments over the lawfulness of the agency's greenhouse gas regulations.

On the one hand, the three judges of the U.S. Court of Appeals for the District of Columbia Circuit appeared to have strong concerns about whether industry challengers had standing to challenge one of the rules.

But they also indicated that it might be possible for a separate challenge to existing regulations that regulate major polluters to proceed.

Today's hearing was the second of two days of closely watched arguments over EPA's suite of four climate rules (***Greenwire***, Feb. 27).
Yesterday, the judges considered EPA's endangerment finding, the agency's original conclusion that greenhouse gases pose a health risk and should be regulated under the Clean Air Act, and the "tailpipe" rule that set greenhouse gas emissions standards for cars and light-duty trucks beginning with 2012 models (***Greenwire***, Feb. 28).

Today, the focus was on the "tailoring" rule, which interprets the Clean Air Act in such a way that only major polluters are required to obtain permits for greenhouse gas emissions. The court was considering it alongside the "timing" rule, which required that new controls of greenhouse gas emissions from stationary sources would be triggered on Jan. 2, 2011, and the challenge to older regulations.

The tailoring rule is considered the most vulnerable to legal attack because EPA was forced to effectively rewrite the Clean Air Act in order to prevent the regulations from applying to nonindustrial sources like schools and apartment buildings.

A key issue is whether the petitioners -- industry groups, utilities and states -- have standing to challenge the rule because they are not currently injured by its impact and would not be affected if the court struck it down. All that would mean is EPA would have to regulate more polluters.

All of the judges expressed some belief that standing could be a major obstacle for petitioners.

Chief Judge David Sentelle in particular appeared incredulous that the remedy the petitioners seek is effectively to give EPA more power to regulate.

"Counsel, that doesn't even make good nonsense," he told Texas Solicitor General Jonathan Mitchell.

In response, Mitchell said the theory is that Congress would intervene if greenhouse gas regulations were applied to a much larger range of emitters, a concept that those observing the proceedings in the packed courtroom found amusing based on Congress' failure to enact climate legislation.

It emerged later in the argument that the separate challenge to several of EPA's past Clean Air Act regulations, could be more fruitful for petitioners.

As Peter Keisler of Sidley Austin argued, the petitioners maintain that EPA should never have applied its prevention of serious deterioration program for major stationary sources to all air pollutants. Instead, it should have limited it to pollutants covered by the national ambient air quality standards, known as NAAQS.

Keisler said that his interpretation of the statute would have been a reasonable alternative that undermines EPA's argument that the tailoring rule was a "last resort" in order to prevent smaller nonindustrial sources from being regulated.

The agency "took a critical wrong turn 30 years ago," he told the court.

The judges, to the dismay of EPA's lawyers, seemed to think that such a challenge was not barred based on previous rulings of the court, in large part because at least one of the challengers was not affected by the regulations before they were applied to greenhouse gases.

"Not until now do we have a petitioner before us who is: a) challenging the historic interpretation and b) injured by it," Judge David Tatel said.

Carrollton Powers Up With Stimulus Money

City spends $512,000 on solar power project

By Sara Story

| ***Monday, Feb 27, 2012*** | ***Updated 7:13 PM CST***
View Comments (3)
|

Meredith Land, NBC 5 New

The city of Carrollton is using a big chunk of federal stimulus money to become more energy efficient. The city is installing two solar power systems. City leaders said the $512,000 price tag is worth it.

"It's new technology, and we are at the cutting edge of it," said Michael McKay, Carrollton's civil engineering manager. McKay said solar power systems are being installed on top of City Hall, and Fire Station No. 2 in Carrollton.

"It's federal money," he said. "It's grant money. It's not directly from the citizens and the community. We see this as an opportunity to try something. It's pretty expensive."

McKay said it would take about 80 years for the investment to pay off.

But the high price tag has some residents talking.

Michael Whatley said it's not an investment he would make.

"It's not a payoff that any of us living here now will see in the future, nor will my kids, who are living here in Carrollton," he said.

McKay said Carrollton had to use the grant money to reduce energy usage in the city, and the solar panels were the best option.

"We see it as a real stable, viable-type technology," he said. "It just needs to lower its price a little bit."

McKay said he hopes the city can eventually save money by saving the environment. The solar power systems will be complete in April, and residents can go online to see how much electricity they are generating.

Bingaman preps electricity standard bill for rollout tomorrow

Gabriel Nelson, E&E reporter
Published: Wednesday, February 29, 2012

Sen. Jeff Bingaman (D-N.M.) tomorrow will roll out his plan for a "clean" electricity mandate, although he isn't optimistic that Congress will pass the bill.

The legislation would require utilities to generate a certain percentage of their electricity from low-carbon sources, like renewable energy, nuclear power and coal, the chairman of the Senate Energy and Natural Resources Committee said in a brief outline of the proposal this morning during a speech at an Energy Department conference in Maryland.

Under Bingaman's proposal, all methods of generating electricity that release less carbon dioxide than state-of-the-art supercritical coal plants would get credit on a sliding scale, depending on their emissions.

New nuclear plants and renewables would get a full credit for every kilowatt-hour they produce, Bingaman said. Coal plants using emissions-cutting technology such as oxycombustion and carbon sequestration would get a partial credit, depending on how well they keep carbon out of the air. And natural gas-fired plants would get about half a credit because they release less carbon than coal.

While the standard "will start off being fairly easy to meet," over time the legislation would phase in "cleaner and more stringent" requirements, Bingaman said.

The legislation's rollout comes more than a year after President Obama first urged Congress to pass a clean energy standard, or CES, in his 2011 State of the Union address. Obama reiterated that call in this year's annual speech.

But Bingaman, who plans to retire at the end of the year, said partisan gridlock on Capitol Hill will likely limit the measure's progress.

"I don't entertain the illusion that the proposal will sweep through Congress and get signed into law this year, but I think it's an important discussion to have," Bingaman said at the Advanced Research Projects Agency-Energy event.

President Obama threw his weight behind a CES after Congress in 2009 failed to pass sweeping climate legislation, which would have set a cap on carbon emissions across the economy. That effort was followed by an unsuccessful bid to establish a more stringent renewable electricity standard, an effort that Bingaman also spearheaded.

"The differences in this chamber may be too deep right now to pass a comprehensive plan to fight climate change," Obama said during last month's State of the Union address. "But there's no reason why Congress shouldn't at least set a clean energy standard that creates a market for innovation."

But many Republicans in Congress -- some of whom once supported the idea of a CES that included coal and natural gas -- fret that hastening the use of cleaner energy sources would be costly, making any proposal a heavy lift. Sen. Lisa Murkowski of Alaska, the ranking Republican on the Energy and Natural Resources Committee, said last month that she sees "no real consensus as of this point in time on how to move forward" (***E&E Daily***, Jan. 30).

Murkowski's spokesman Robert Dillon said today that Bingaman has shared details of the proposal with her, but she is not working with him on the bill and she does not think it will have enough votes to clear the committee.

Bingaman, who is widely considered a peacemaker on Capitol Hill, prefaced today's announcement with a biting critique of Congress' current approach toward energy policy.

Energy efficiency standards, renewable energy tax credits and loan guarantees for cutting-edge energy projects in recent years all passed with bipartisan support, only to become the subject of "attacks on cable TV and in Congress," Bingaman said.

He also cited the need to extend the production tax credit for renewable energy, which is set to expire at the end of this year. If it expires, companies such as wind turbine manufacturers and their suppliers could shed thousands of jobs, Bingaman said.

"Those are good jobs, those are energy jobs, but in our current political context they are apparently not the right kind of energy jobs," Bingaman said.

Sen. Chris Coons (D-Del.) made note of Bingaman's remarks about the outbreak of partisanship on energy policy. "Frankly, it was hard at the end of his remarks not to hear a certain heaviness in his heart," Coons said.

Radon in U.S. classrooms a concern

Published: Feb. 29, 2012 at 1:49 PM

NEW YORK, Feb. 29 (UPI) -- Radioactive radon gas, a known carcinogenic, is in thousands of U.S. classrooms but many districts are doing nothing about it, NBC's "Today" show reported.

Radon, released in the breakdown of soil and rock, can seep into buildings and the air we breathe and with chronic exposure can be deadly, experts said.

At one school in Pennsylvania, tests showed nearly double the EPA's accepted limit for radon gas, "Today" reported Wednesday.

Radon exposure has been linked to more than 20,000 deaths every year, the second leading cause of cancer after smoking, the U.S. Environmental Protection Agency said.

"Of all the environmental exposures you get, this is the one that causes the most deaths," said R. William Field of the University of Iowa, a leading expert on radon.

"If a student's exposed, even at the EPA's action level, 4 picocuries per liter, that's equivalent to smoking half a pack of cigarettes per day," he said.

Most U.S. schools don't test because districts can't afford it, experts say, even though the EPA estimates that more than 70,000 classrooms nationwide are at risk.

Only five states require radon testing and there's no federal law mandating it, "Today

Emissions plan review sought

Oklahoma, utilities asks appeals court to review EPA ruling

BY JAY F. MARKS jmarks@opubco.com 2
Published: February 29, 2012

Oklahoma and its two largest electrical utility companies are continuing to push back against a U.S. Environmental Protection Agency plan to reduce emissions that impact visibility at federal wildlife areas.

The state, Oklahoma Gas and Electric Co. and Tulsa-based Public Service Co. of Oklahoma filed petitions last week asking the 10th Circuit Court of Appeals in Denver to review the EPA's decision to reject the state's plan to reduce emissions in favor of its own.

“The EPA's decision to implement new guidelines under the regional haze rule, which is not health related, goes against Oklahoma's right to enact a state solution that not only would exceed federal standards, but would spare Oklahoma utility consumers from substantial utility rate increases at a time when families are struggling,” saidDiane Clay, spokeswoman for Oklahoma Attorney General Scott Pruitt.

OG&E also asked the EPA to reconsider its ruling on the state's regional haze plan.
“We have said all along that we would pursue this path if the outcome was detrimental to our customers,” spokesman Brian Alford said. “We believe the plan will be very costly to our customers.”

Alford said the state submitted a viable plan to reduce sulfur dioxide emissions from three aging coal plants by gradually switching to natural gas to generate electricity.

The EPA plan would force OG&E and PSO to install expensive scrubber technology or shut down those plants in favor of building new ones, officials have said. Either option is expected to result in considerable cost increases for the companies' customers.

“The federal plan is not the right answer for Oklahoma,” he said.

The Oklahoma chapter of the Sierra Club has sided with the EPA on the issue.
“Oklahoma leaders should stop fighting to allow Oklahoma's outdated, dirty coal plants to operate without modern pollution controls, and instead should focus on working with Oklahoma utilities to create a plan for a just transition toward a healthier power system that benefits Oklahomans, from Oklahoma resources,” associate organizerWhitney Pearson said. She said the federal plan creates an incentive for utilities to transition to resources that come from Oklahoma, rather than relying on coal imported from other states.

“If you want to create jobs and keep money in Oklahoma, EPA did us a favor,” Pearson said.

AG, utilities file to stop emissions rule

Clean-air advocates criticize move to stop EPA

By D.E. Smoot Phoenix Staff Writer

Clean-air advocates criticized efforts by two public utilities and the Oklahoma Attorney General's Office to undo federal rules designed to reduce emissions from coal-fired power plants.

Those entities filed petitions challenging the U.S. Environmental Protection Agency's regional haze rule, which took effect Jan. 27. Federal regulators adopted the rule after deciding a state proposal failed to address the best ways to reduce sulfur-dioxide emissions at three Oklahoma power plants.

Attorney General Scott Pruitt filed a petition on behalf of the state and Oklahoma Industrial Energy Consumers, an unincorporated association of businesses trying to keep energy costs reasonably low. Oklahoma Gas & Electric Co., which operates two of the power plants targeted by the rule, and Public Service Co. of Oklahoma, the owner of the third targeted facility, also asked the 10th Circuit Court of Appeals to review the federal rule.

The goal of the regional haze rule is to reduce emissions of fine particulates, which limit visibility in national parks, and sulfur dioxide, which can harm public health. The federal rule requires operators of three coal-fired power plants to upgrade emissions-reduction technologies or switch to cleaner burning fuels within five years.

Officials with OG&E, which operates a coal-fired power plant outside Muskogee, say consumers would bear the cost of compliance, which they say could total a billion dollars or more. Consumers who support the federal plan, however, say state leaders and utility companies should end the fight.

"Oklahoma leaders should stop fighting to allow Oklahoma's outdated, dirty-coal plants to operate without modern pollution controls," said Whitney Pearson, associate organizer with the Oklahoma chapter of the Sierra Club. "Instead they should focus on working with Oklahoma utilities to create a plan for a just transition toward a healthier power system that benefits Oklahomans from Oklahoma resources."

Brian Alford, director of communications and community relations for OG&E Energy Corp., said in addition to the court filing, the company petitioned the EPA asking for an administrative stay and rule reconsideration.

"We've made it abundantly clear we would pursue litigation if we believe the EPA alternative was detrimental to our customers," Alford said. "We believe the federal implementation plan is very detrimental, especially in light of the fact the state plan would achieve the same outcome at much less cost."

Alford said the primary difference between the state and federal plans is the time frame for reduced emissions.

Diane Clay, communications director for Pruitt's office, said the state's petition, filed Friday, is the appeal the Pruitt promised to file.

"The EPA's decision to implement new guidelines under the regional haze rule, which is not health related, goes against Oklahoma's right to enact a state solution," Clay said. A state solution "not only would exceed federal standards but would spare Oklahoma utility consumers from substantial utility rate increases at a time when families are struggling."

Although Clay points out the haze rule is designed to address aesthetic concerns, the EPA also discusses its public health aspects in supporting documents. EPA officials say three of the state's coal-fired plants, including OG&E's Muskogee plant, spew thousands of tons of sulfur dioxide. This, they say, endangers public health and contributes to low air quality and poor visibility.

Statistics cited by the Sierra Club show nearly 80,000 children and more than 230,000 adults in Oklahoma suffer from asthma. In 2007, hospitalization for asthma-related illnesses cost Oklahomans about $57.9 million. Much of that, Pearson and other environmental advocates say, is because of dirty air.

The EPA adopted the final rule in December after determining plans submitted in 2007 and 2010 by the Oklahoma Department of Environmental Quality failed to meet certain criteria. The federal rule incorporates core parts of the state's plan dealing with aesthetics, but it imposes stricter standards for sulfur dioxide emissions for three of Oklahoma's oldest coal-fired plants.

Tiger shrimp hunted in Gulf

By Lynn Brezosky

Updated 01:49 a.m., Thursday, March 1, 2012

BROWNSVILLE — When the shrimp boat Captain Wallace pulled into port last week, it carried something sinister in its catch: a nearly 11-inch black tiger shrimp.

Characterized by their super size and tiger-like striping, the nonnative monster to the Gulf of Mexico was the 10th this year to meet the measuring stick of coastal biologist Tony Reisinger.

Those who study the Gulf's ecology fear one or more breeding populations have been established, and that the tigers may spread unchecked, toppling the food chain and wiping out native shrimp and other Gulf species.

Native and prized among chefs in Indo-West Pacific areas of East Africa, South and Southeast Asia, the Philippines, and Australia, the species Penaeus monodon wasn't recorded in the Gulf of Mexico until 2006.

That year, there was one, caught in Mississippi Sound near Dauphin Island, Ala. In 2007, came another, in Vermilion Bay, La. In 2008 and 2009, they started appearing off the coasts of Georgia, Mississippi and Texas. Then, in 2011, there were hundreds. At least 25 have been collected in the first two months of 2012.

“These are predacious shrimp, vs. our shrimp which are scavengers,” Reisinger said. “They get up to over a foot in length and a pound in size. All shrimp are cannibalistic, but this one, because it's a predator, I think it will probably eat our species.”

Thomas Shirley, a Gulf of Mexico expert at Texas A&M University-Corpus Christi, said the tiger population may have been growing geometrically in recent years but are only recently being recognized.

“The numbers have been increasing, and not just in Texas but all along the coast and the Southeastern United States,” he said. “If there were more than 100 reports of tiger prawns being caught in Louisiana in 2011, that means there are probably a thousand.”

“It's more of a problem of outcompeting our shrimp for habitat or resources,” he added. “We really don't know what their effect will be on the food web. We won't know until after the fact.”

There's also potential the tigers will spread any one of about 16 diseases, much in the way European settlers set off a smallpox epidemic among Native Americans. And there's concern the tigers are too much of a mouthful for native Gulf fish, leaving the tigers without predators.

Reisinger in recent months has been working with Texas Sea Grant and the Texas Department of Parks and Wildlife to get the word out among shrimpers and urge them to bring them to scientists for study.

Sea Grant has created “Wanted” posters in English and Spanish and is making a third version in Vietnamese. The posters, distributed to shrimp docks around the Gulf, urge captains and crew to record the date, location, and depth where the tigers were caught.

A new line will be added urging the shrimpers to keep an eye out for juveniles, the best indication the tigers are multiplying.

The majority so far are being brought in off the coast of Louisiana. Five have been caught off Texas. Carlton Reyes, president of the Brownsville-Port Isabel Shrimp Producers Association, said shrimpers are all doing their best to support the research and hoping dire predictions don't come true.

“They're all out there looking for them,” he said. “We just don't know what's going to happen. We just have to wait and see.”

The more specimens the better, said Leslie Hartman, Matagorda Bay ecosystem leader for Texas Parks and Wildlife. Genetic testing, she said, could rule out if the shrimp originate from a 1988 outbreak off the coast of South Carolina, caused by a breach of a research farm.

“If we find out that they're all closely related, then certainly it's more likely it was a single introduction from South Carolina,” she said. “If we find out they're scattered genetically and not related, then we know there were multiple outbreaks and then we have to track down the origin of them.”

A leading theory is that Hurricanes Katrina and Rita in 2005 breached a Caribbean aquaculture facility where tigers were being cultivated.

“When it was just one in 2006, it was a very minimal concern,” Hartman said. “As the population grows and we're not sure where the heck they're coming from, that's where our concern lies.”

“When critters are transplanted or plants are transplanted to someplace new, you're never quite sure what's going to happen. Some species are nonnative; they're just not from around here. Others species go invasive.”

Stopping new introductions may be the best thing biologists can do, she said.

“What we could potentially do, if we find out where they're coming from, we can stop any new introductions.” she said.

Read more: http://www.mysanantonio.com/news/article/Tiger-shrimp-hunted-in-Gulf-3372509.php#ixzz1nsOKmCw6

Gulf oil spill case court docket is busy as settlement talks continue

Published: Thursday, March 01, 2012, 7:00 AM

By **Mark Schleifstein, The Times-Picayune**

As **settlement negotiations** in the **Gulf oil spill** lawsuit continue between **BP** and the Plaintiffs' Steering Committee, representing private parties who have sued the company for damages, Judge Carl Barbier and magistrates overseeing the **larger lawsuit** that includes the federal and Gulf Coast state governments continue to churn out rulings that could affect the ultimate outcome.

On Wednesday, Barbier asked Magistrate Judge Joseph C. Wilkinson, Jr. to oversee a feud between the Wisner Donation Trust and BP over whether the oil company had turned over records of damage it did to the segment of Fourchon Beach owned by the trust.

The trust contends that an agreement it signed with BP allowing the company to clean oil from its land included a requirement that BP provide it with detailed records of the damage caused by the oil and the cleanup operations, and the company has refused to turn them over.

The trust wants the information to help prove its case that in addition to the damage done by the oil itself in the weeks and months after the spill, contractors hired by BP to remove oil from the beach did significant damage to the land.

"There were up to 1,800 people a day crawling over the property with heavy equipment," said Joel Waltzer, an attorney representing the trust. "We're the only place on Louisiana's coast that had five miles of Hesco baskets, hard structures, sheet pile dams and other materials that literally changed the beach."

Under the Wisner trust, which was donated in 1914 to the city of New Orleans under a 100-year agreement, the city receives 34.8 percent of the trust's revenue, Charity Hospital and the state of Louisiana receive 12 percent, and the rest goes to Tulane University, the Salvation Army and heirs of Edward Wisner. The city's revenue is distributed through its Wisner Fund as grants for health, beautification, education and capital projects.

Much of Port Fourchon, the Louisiana Offshore Oil Port's onshore operations, facilities owned by Chevron Oil and a number of other oil- and gas-production facilities all sit on Wisner land.

Damage to the beach could threaten the Port Fourchon industrial center, located just to the north, and the nearby Bayou Lafourche channel, Waltzer said.

In his order assigning the dispute to Wilkinson, Barbier said he's not ready to rule on the issue, but hopes it can be worked out between the parties, possibly through use of an outside mediator.

Meanwhile, Magistrate Judge Sally Shushan on Wednesday issued an order allowing the attorney of a prospective witness, Donald Vidrine, to accompany him to an appointment with a court-appointed psychiatrist who is conducting an independent examination to determine whether Vidrine can testify in the trial.

But Shushan ruled the attorney cannot sit in on the actual examination and advise him on whether to answer the doctor's questions.

Vidrine was the BP well site leader at the time of the Macondo well blowout, and co-defendant Transocean Marine, which owned the Deepwater Horizon, and other parties have unsuccessfully sought to question him in a pre-trial deposition about what happened aboard the drillship at the time of the accident. Vidrine also refused to testify during Coast Guard hearings on the accident in May 2010, also citing his health problems.

"Vidrine has consistently refused to appear for a deposition on account of an alleged medical condition which prevents him from giving testimony about such events," Barbier said last Friday in a ruling upholding an earlier Shusan order that Vidrine be examined by the independent psychiatrist.

In that order, however, Barbier said Vidrine has not waived his right to assert a psychotherapist-patient privilege for information in his medical records for use in other court actions, "specifically including any ongoing criminal investigation of the events giving rise to the Macondo well blowout." In her Wednesday order, Shushan also allowed Vidrine to reschedule his examination, but did not set a date for the appointment.

Also Wednesday, attorneys representing Kenneth and Velma Campo, owners of Frank Campo's Marina at Shell Beach in St. Bernard, filed a motion with the court asking Barbier to sever their individual lawsuit against BP from the larger, consolidated lawsuit, since it involves only a contract dispute involving BP's lease of space in the marina.

In the immediate aftermath of the spill, National Guard troops erected a temporary floating pier adjacent to the marina for "vessels of opportunity" to load boom that was being used to block oil from reaching Louisiana wetlands.

Pearl River's health assessed after massive chemical discharge killed thousands of fish

Published: Wednesday, February 29, 2012, 11:00 PM

By Times-Picayune Staff

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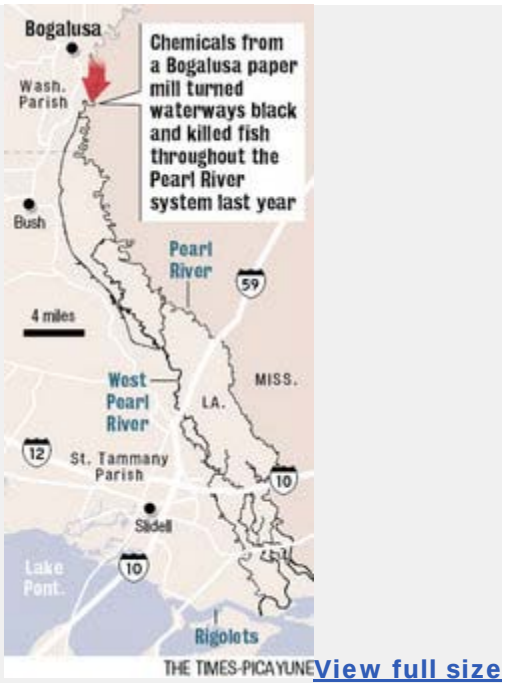
For a time last summer, the waters of the West Pearl River turned from chocolate brown to dense black, the river's surface jammed with **hundreds of thousands of dead fish**. Six months after **an illegal chemical discharge from the Temple-Inland paper mill in Bogalusa**, the river looks like the river again. Fish have returned to the West Pearl and adjacent waterways, with an assist from state fisheries experts. And local officials and environmentalists are closely monitoring the river's condition.

Mike Wood, fisheries director for the state Department of Wildlife and Fisheries, said the department is in the midst of a three-year intensive sampling project concerned with restoring the river.

The department of fisheries restocked the river with tens of thousands of channel catfish and bluegill fingerlings in November, but Wood said the department is not done with its efforts. Wood said he couldn't tell how well the newly introduced fish were surviving because the department hasn't conducted a sampling yet.

"We don't have any concerns that the fish won't survive," Wood said.

Wood said the department will restock the river with more fish in the spring or summer and follow up with sampling tests in late summer or fall to determine the number and types of fish in the river.



THE TIMES-PICAYUNE View full size

He said that despite the damage caused by the spill, the water quality has returned to a safe level and he has talked to anglers who are catching fish in the river.

"It's not a dead zone by any stretch," Wood said.

Meanwhile, the mill must pay for major infrastructure upgrades as a condition of reopening, and it will face a fine once the investigation into the spill is finished, according to state officials.

Environmentalists are trying to prevent another harmful spill from occurring.

On Feb. 1, the Delta Chapter of the Sierra Club, a national organization aimed at preserving the environment, called on Gov. Bobby Jindal to require DWF Secretary Robert Barham to develop a new management plan for the West Pearl River.

“The purpose of the Scenic Rivers Act is to preserve and advance the water qualities of the specific river,” said Haywood Martin, chairman for the Delta Chapter.

Martin said the current plan doesn’t identify potential sources of pollution for the river and is asking for an updated plan that takes into account the current state of the water, such as the high levels of mercury, and past disasters like the Temple-Inland spill.

“The Department of Environmental Quality, in cooperation with Wildlife and Fisheries, is working with all stakeholders involved, including community members, wildlife and environmental organizations, and the business community to protect the wildlife and ensure the safety of the West Pearl River,” said Frank Collins, press secretary for Gov. Bobby Jindal, in response to the Sierra club’s letter.

The letter was originally sent to Barham on Nov. 18 by the Sierra Club, requesting he draw up a new management plan to replace the current one.

Martin said the group didn’t receive a response from Barham and sent the letter directly to Jindal, asking for his assistance in the matter.

However, Barham said he hadn’t seen the group’s letter until Feb. 1, attached to Jindal’s copy.

Barham said the Sierra Club is referring to a master plan that hasn’t been updated since it was drawn up along with the Scenic Rivers Act.

“The truth is, we don’t manage (the rivers) based on that master plan,” Barham said.

He said the department manages the river in accordance with different rules and regulations that are changed frequently.

“They are updated to change either when we identify, the governor identifies or any other interested parties comes to us with specific concerns,” Barham said. “We will be glad to work with the Sierra Club and others if their specific concerns are brought to us.”

Pearl River resident David Tootle, a retiree who has been fishing on the river for 20 years, said recently that he couldn’t comment on the condition of the river because of the high water level.

However, most of the black liquor, the chemical substance discharged by the mill in August, has been flushed out of the river by now, Tootle said.

He said it has been more difficult to catch fish recently, but he didn’t know whether to attribute that to the high water level or the spill itself.

“Everyone else says, ‘It’s fishing as usual,’” said Darrell Dubuisson, a Hickory resident.

Although Dubuisson said the water quality is back to normal, he said fishing isn’t the same.

Dubuisson, who used to fish for white perch on the Pearl, said he was able to fish from the mouth of Lock 1 before the Temple-Inland disaster.

Now, he must find new fishing spots.

“I mainly fish the canals,” Dubuisson said. “I try to stay away from here.”

Energy

Landrieu Issues Warning on Interior Budget To Get More Funding for Gulf Coast States

BNA Snapshot

Coastal Restoration

Key Development: Sen. Landrieu threatens to block funding for Interior Department programs that rely on offshore oil and gas revenues unless Gulf Coast receives greater share for coastal restoration.

By Lynn Garner

Sen. Mary Landrieu (D-La.) made a plea for directing more government revenue from offshore oil and gas drilling to Gulf Coast states to restore coastal areas and wetlands that are affected by oil and natural gas operations off their shores during a Feb. 29 budget hearing.

Landrieu threatened to take virtually any action necessary to make that happen, although she did not say specifically whether she intends to hold up the bill unless her demands are met.

Landrieu's sometimes emotional comments were directed at Interior Secretary Ken Salazar during the first hearing of the Senate Subcommittee on Interior, Environment, and Related Agencies on the president's fiscal year 2013 budget.

Landrieu's ire was triggered by the Interior Department's proposal to cancel $200 million in unspent funds that were intended for the coastal impact assistance program, which was established with Landrieu's help to assist coastal states with the effects of energy production off their shores.
She told Sen. Jack Reed (D-R.I.), subcommittee chairman: “Mr. Chairman, that money cannot leave the Gulf Coast.”

Her bigger complaint was the allocation of roughly $12 billion in revenue that is collected annually from oil and gas production in Gulf of Mexico federal waters and is distributed by Interior to fund departmental programs in all 50 states.

She noted that monies in the Land and Water Conservation Fund designed for acquisition of unique lands that need protection focus solely on interior states with nothing for the Gulf Coast.

Landrieu Losing Patience

“I don't know how long this committee expects me to be a cooperative member,” Landrieu told her colleagues. “I really don't know how long this administration expects me to try to be supportive. I cannot express anymore that we have had enough.”

She recalled an independent study that concluded the 2,000 independent oil and gas producers in Louisiana are still struggling economically because the Obama administration is not moving quickly enough to issue drilling permits in the wake of the Deepwater Horizon oil spill.

“I strongly disagree with the policies of this administration,” she told Salazar, regarding the distribution of offshore revenues to coastal states and interior states from energy production in federal waters.
She recalled the devastation of Hurricane Katrina, which put the city of New Orleans under water, and the ongoing loss of coastal wetlands in southern Louisiana.

“I've had it,” Landrieu continued. I don't know what I'm going to do. But I'm going to use all the power that I can to stop any funding for any program as long as the money is coming off the coast of Louisiana, Mississippi, and Texas.“

Go West, Mr. Secretary

“Y'all can go find the money elsewhere,” Landrieu told her fellow senators. “Go get money from the interior states.”

Landrieu has long objected to the fact that interior states with oil and natural gas production on federal lands receive 50 percent of the revenues that accrue to the federal Treasury, while the Gulf Coast states only recently began receiving a third of the revenues from offshore production in federal waters. The state of Wyoming, with a population of a half-million people, received $971 million last year from federal revenue sharing, which it can spend as it wants, Landrieu observed. “And I can't get one penny of the $6 billion that comes off the Louisiana coast.”

“It's got to stop,” Landrieu declared. “So get your money, Mr. Secretary, from the West. They have plenty of it, and let us use our money to save ourselves.”

Salazar tried to reassure Landrieu, saying the administration is concerned with coastal restoration on the Gulf Coast. He said that once the litigation is resolved from the BP Deepwater Horizon oil spill and a settlement is reached, then Louisiana will see more money.

It will be “the most significant ecosystem restoration project in the Gulf of Mexico that we've ever seen,” Salazar promised Landrieu.

Landrieu left the hearing after her remarks. “We're working very hard to make sure we're taking care of the Gulf states,” Salazar told the subcommittee.

On other issues, Reed and Maine Republican Susan Collins urged the secretary to expedite the environmental review and permitting process for offshore wind energy development off the Northeast coast. They said the department seems to be focusing more on Mid-Atlantic projects than on New England.

Concerns Over Fracking Rule

Sens. Jon Tester (D-Mont.), John Hoeven (R-N.D.), and Lisa Murkowski (R-Alaska), subcommittee ranking member, questioned Salazar on his plans to issue a departmental rule governing the use of hydraulic fracturing for oil and gas drilling on federal lands.

Murkowski questioned why Interior needs to allocate money for research when the Department of Energy and the Environmental Protection Agency also are conducting research to make certain that “fracking” does not contaminate water supplies.

Salazar said there must be public confidence in the drilling process if shale oil and gas resources are to be developed. He said the Interior rule will have three components: disclosure of chemicals; wellbore integrity to prevent leakage of chemicals; and monitoring the “flowback” of water and materials to avoid contamination of land and streams.

Tester said the Bakken oil shale formation in eastern Montana is being targeted by industry for development, and residents are concerned about the safety of their water supplies.

Deputy Secretary David Hayes told Tester that the proposed rule, which is still being drafted, will require certification by operators that they are following the proper procedures involving well cementing and “walling off” deep underground aquifers. The inspections will be partly self-inspection and agency inspections, Hayes said.

Hoeven said industry is concerned that the rules being developed by the administration will not allow companies to change their formulas during the drilling process, which may be required when conditions change.

Salazar said the department's rulemaking is still a work in progress.

Hoeven also expressed concerns with Interior's proposed stream buffer rule, designed to protect streams affected by mountaintop removal coal mining operations.